

REMARKS

Claims 1 – 26 remain in the application and stand rejected. Claims 16 – 23 are amended herein. Although this Response is being filed with the fee for a one (1) month extension of time, the Commissioner is further authorized to charge any additional fees that may be required for this paper or credit any overpayment to Deposit Account No. 50-3818.

The MPEP provides in pertinent part “the examiner should always look for enabled, allowable subject matter and communicate to applicant what that subject matter is at the earliest point possible in the prosecution of the application.” MPEP §2164.04 (emphasis original).

Claims 16 – 23 are rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter, i.e. “as a program per se, or that the program product and medium is merely a carrier wave or signal, which is non-statutory.” Office Action, #4, pages 2 – 3, bridging paragraph. While the applicant continues to believe that claims 16 – 23 are directed to statutory subject matter, these claims are amended to recite “executed by a processor” as suggested by the Office action. Reconsideration and withdrawal of the rejection of claims 16 – 23 under 35 U.S.C. §101 is respectfully requested.

Claims 1 – 26 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,484,033 to Murray and U.S. Patent No. 7,039,420 to Koskinen et al. in combination with published U.S. Patent application No. 2005/0195802 to Klein et al. alone, or further in combination with U.S. Patent No. 6,167,122 to Titmuss. The rejection is respectfully traversed.

Applicant notes that Klein et al. has a February 16, 2005 filing date, subsequent to the present application. Thus, for priority Klein et al. relies on a provisional application, filed about a month prior to the present application. The applicant can, if necessary, provide an Affidavit under 37 C.F.R. §1.131, establishing an invention date for the present invention prior to the Klein et al. provisional application date; and therefore, establishing that Klein et al. is not a reference against the present application. The applicant reserves the right to provide such an Affidavit, including prior to further action in this application, but especially, if the rejection is maintained over Klein et al. in combination with any reference or references of record. However, for the reasons set forth hereinbelow, the applicant believes the Affidavit to be unnecessary to overcome the rejection.

As noted hereinabove, Klein et al. has a filing date that is subsequent to the present application. Therefore, unless and until the applicant establishes an earlier filing date, Klein et al. may be relied upon as a reference, only for what is described in the Klein et al. provisional application.

In rejecting claims 1, 12, 16, 20 and 24, the Office Action acknowledges that “Murray in view of Koskinen differs from the claimed invention by not explicitly reciting the inconsistencies further being indicated by a system user indicated as being at a communications device other than an associated one.” Pages 5 10, 11, 13 and 14. Thus, the Office Action turns to Klein et al., asserting that Klein et al. teaches “call forwarding based on a user’s schedule (Fig. 3 [304]), based on the device’s location (Page 5 [0107] ‘GPS positioning’) and by the location of the user. (Page 5 [0107] ‘location of the callee’ which can be determined by ‘noting that the user has used a particular phone recently’).” *Id.*

Klein et al. Figure 3 is not included in the Klein et al. provisional application. Thus, Klein et al. Figure 3 may not be relied upon. Neither is Klein et al. paragraph 0107 included in the Klein et al. provisional application. The only mention of “GPS” in the Klein et al. provisional application on page 2. Specifically, the Klein et al. provisional application teaches that the callee knows “how they can be reached than the caller... where they are and is therefore in the best person to cause calls to be routed to them.” Klein et al. provisional application, bridging paragraph, page 1. Thus, Klein et al. describes a

Personal Call Management system (PCM) [that] gives this capability to the callee (user). The PCM system is designed to allow the user to give out one or more TNs to callers. The user can categorize callers based on the TN they give them, or the user can give callers multiple numbers (as they often do today). In either case, calls are routed to the user (most convenient phone) wherever they may be. This routing of calls can be controlled, or "filtered," based upon **any combination** of called number, calling number, time of day, location of user (using **GPS** [on cell phone or in car], cell phone tower location, tower triangulation, Instant Messaging presence, Smart Tags, or other locating technology), location of caller, **recent phone use**, explicit selection (using web page, cell phone application, dial-in IVR, or other method), or implicit system-learned (adaptive) understanding of the user’s call-receipt desires. Calls may also be sent to voicemail without ringing the user’s phone, based upon filtering or explicit selection. Users may configure their routing and filtering by behavior/location/activity mode. Example modes are: At Home, At Work, At Work in a Meeting, Commuting, On Vacation. The selection of active mode can be made explicitly or implicitly. Explicitly mode selection can

include time-of-day and user input using cell phone, web, or phone IVR. (A cell phone may have a physical mode button or a "soft" menu list of modes from which to make a selection.) Implicit mode selection can include location information (including velocity calculated from sequential position samples), computer calendaring information, past behavior of the user, and the location of other users ("suppress calls while I'm in the presence of the CEO"). Note that **GPS** may be used to route calls (based on mode), to a phone that is not necessarily housing the **GPS**. For example, if the user is carrying their cell phone (or other location aware device) and walks into their office, the user's mode may change to "At Office" and calls will be routed to the office phone.

Id, (emphasis added). So, the Klein et al. provisional application "system (PCM) gives this capability [the user designating how to reach the user] to the callee (user)." *Id*. Certainly, enabling the user to cause/control call routing does not teach or suggest user schedule "inconsistencies further being indicated by a system user indicated as being at a communications device other than an associated one," acknowledged (*supra*) as not being taught or suggested by Murray and Koskinen.

Further, with regard to reliance on Klein et al. "Page 5 [0107] 'location of the callee' which can be determined by '**noting that the user has used a particular phone recently**)" (*supra*, emphasis added), this is not copied from the Klein et al. provisional application. Instead, as close a corresponding passage as the applicant can find, is in the same above passage, i.e., the mention of "recent phone use." *Supra*. However, "recent phone use" could mean anything, e.g., how heavily a phone has been used recently by anyone; and, only vaguely and in hindsight, suggests "noting that the user has used a particular phone recently," the Klein et al. passage relied upon to suggest the present invention.

However, a suggestion of a suggestion is not sufficient to render the present invention obvious. Therefore, the Klein et al. passage relied upon to suggest what is missing from Murray and Koskinen, is not included in, nor supported by, the Klein et al. provisional application. Therefore also, the combination of the Klein et al. provisional application with Murray and Koskinen does not teach or suggest, and fails to result in, the present invention, as claimed by the claims as rejected and as amended. Neither is this taught or suggested by Titmuss, relied on to further teach a system user logging on from an unexpected computer being an inconsistency. Therefore, the present invention is patentable over all references of record. Reconsideration and withdrawal of the rejection of claims 1 –26 under 35 U.S.C. §103(a) is respectfully requested.

The applicant thanks the Examiner for efforts, both past and present, in examining the application. Believing the application to be in condition for allowance, both for the amendment to the claims and for the reasons set forth above, the applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1 – 26 under 35 U.S.C. §§101 and 103(a) and allow the application to issue.

As previously noted, MPEP §706 “Rejection of Claims,” subsection III, “PATENTABLE SUBJECT MATTER DISCLOSED BUT NOT CLAIMED” provides in pertinent part that

If **the examiner** is satisfied after the search has been completed that patentable subject matter has been disclosed and the record indicates that the applicant intends to claim such subject matter, he or she **may note** in the Office action that **certain aspects or features** of the patentable invention have not been claimed and that if properly claimed such claims **may be given favorable consideration**.

(emphasis added.) The applicant continues to believe that the written description of the present application is quite different than and not suggest by any reference of record. Accordingly, should the Examiner believe anything further may be required, the Examiner is requested to contact the undersigned attorney at the local telephone number listed below for a telephonic or personal interview to discuss any other changes.

Respectfully submitted,

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